REMARKS

The Office Action dated August 8, 2006 reopened prosecution and rejected all pending claims 1, 2, 5, 8, 13, 14, 20, 21, 24, 27, 39, 40, 43, 46, and 51-54. This paper amends claims 1, 5, 13, 14, 20, 24, 32, 33, 39, 43, 53, and 54. Claims 1, 2, 5, 8, 13, 14, 20, 21, 24, 27, 39, 40, 43, 46, and 51-54 remain pending in the application.

Applicants thank Examiner Blount for his time and courtesy during the November 6, 2006 telephone call with Applicants' representative, Michael Rodriguez. During the telephone call, they discussed the validity of the Hsu reference as prior art for purposes of 35 U.S.C 103(a). Examiner Blount agreed that Hsu was disqualified as prior art under 35 U.S.C 103(c) based on Applicants' remarks of June 7, 2005.

The Office Action rejects claims 1, 2, 5, 8, 13, 14, 20, 21, 24, 27, 32, 33, 39, 40, 43, 46, and 51-54 under 35 U.S.C. 103(a) as being obvious over Hsu (U.S. Patent No. 6,363,319) in view of Odlyzko (U.S. Patent No. 6,295,294). The Office Action also rejects claims 8, 13, 14, 27, 32, 33, 46, 53, and 54 under 35 U.S.C. 103(a) as being obvious over Bertin in view of Hsu and Odlyzko. Because Hsu is disqualified as prior art for purposes of 35 U.S.C. 103(a), Applicants submit that these rejections are moot and should be withdrawn.

The Office Action also rejects claims 1, 2, 5, 20, 21, 24, 39, 40, 43, 51, and 52 under 35 U.S.C. 103(a) as being obvious over Bertin (U.S. Patent No. 5,687,167) in view of Odlyzko. Applicants respectfully traverse the rejection because the cited references, whether taken alone or in combination, do not

teach or suggest every element and limitation of the Applicants' invention as now claimed.

The Applicants' invention, as now set forth in representative independent claim 1, includes evaluating one or more network paths between a source and a destination until one network path is found with sufficient unused network resource available for supporting the data packet flow of the data path and with <u>at most</u> an acceptable <u>maximum number of hops,</u> or until no such network path is found. If one such network path is found, the data path is configured on the one network path and allocated a sufficient portion of the unused network resource to support the data packet flow associated therewith. If no such network path is found, a network path between the source and destination is selected, the data path is configured on the selected network path, and a network resource is taken from an existing data path on that selected network path having a priority lower than the predetermined priority of the data path in order to allocate sufficient network resource to the data path to support the data packet flow associated therewith.

Bertin discloses a Path Selection process for establishing a connection through a network that includes finding a <u>shortest</u> possible path. This requirement to find a path having as few hops as possible, however, does not teach or suggest finding a network path with <u>at most an acceptable maximum</u> number of hops, as now set forth in the Applicants' claimed invention. Bertin places no upper limit on the number of hops that a selected path may have. Unlike the Applicants' claimed invention, Bertin has no acceptable maximum number of hops beyond which even the shortest possible path becomes unacceptable.

Odlyzko teaches a technique for limiting network congestion that involves using cost (i.e., pricing) to influence the use of logical channels. Each user selects a channel that provides a subjectively optimal balance between cost and quality of service. Presumably, the lowest cost channels will have more traffic than the higher cost channels. The pricing structure ensures a distribution of traffic across the logical channels.

Although Odlyzko may teach selecting a logical channel based on cost, this cost has no apparent relationship to the number of hops over which logical channel travels. Therefore, Odlyzko does not teach or suggest configuring a data path on a network path having at most an acceptable maximum number of hops, as set forth in the Applicants' claimed invention. Any combination of Bertin with Odlyzko, therefore, fails to teach or suggest the Applicants' invention, which seeks to find a network path with sufficient available network resource to support the data path and with at most an acceptable maximum number of hops. Applicants' respectfully submit that the amendment has overcome the rejection.

Each other independent claim recites language similar to that of claim 1, and therefore is patentable for at least the reasons provided in connection with claim 1. Each dependent claim depends directly or indirectly from one of the patentable independent claims, and incorporates all of its respective limitations and, therefore, is patentably distinguishable over the cited references for at least those reasons provided in connection with the independent claims. Each dependent claim also recites an additional limitation, which, in combination with the elements and limitations of its independent claim, further distinguishes that dependent claim from the cited references. Applicants respectfully request withdrawal of the rejection of these claims.

CONCLUSION

In view of the arguments made herein, Applicants submit that the application is in condition for allowance and requests early favorable action by the Examiner.

If the Examiner believes that a telephone conversation with the Applicant's representative would expedite allowance of this application, the Examiner is cordially invited to call the undersigned at (508) 303-2003.

Authorization is hereby granted to apply any credits or fees due in this case not covered by check to Deposit Account 50-2295.

Respectfully submitted,

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